Supreme Court of the United States

OCTOBER TERM, 1967

No. 236

MILES EDWARD HAYNES, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

CR-3-703

THE UNITED STATES

vs.

MILES EDWARD HAYNES

For U.S.:

Melvin M. Diggs
B. H. Timmins, Jr.

For Defendant:

Ernie Figari, Ct. Aptd.

STATISTICAL RECORD

J.S. 2 mailed 3-31-66
J.S. 3 mailed Apr. 30, 1966
Violation
Title 26
Sec. 5821 5851 5861
Illegal possession of firearms
(3 counts)

DOCKET ENTRIES

DATE 1966		
March	4	Filed WAIVER OF INCIDENT.
March	4	Filed INFORMATION.
March	4	Filed defendant's MOTION TO DISMISS.
March	4	Filed defendant's MOTION TO SUPPRESS EVIDENCE.
March	4	Filed defendant's MOTION FOR SPEEDY TRIAL.
March	4	Bench warrant ordered issued in open court and bond set at $500.00.

PROCEEDINGS

DATE 1966	
March 4	Issued WARRANT for arrest of defendant and given to U. S. Marshal.
March 10	Filed defendant's MOTION to suppress statement of defendant & Brief.
March 10	Filed defendant's MOTION TO DISMISS counts 1 and 3.
March 10	Filed deft's MOTION TO DISMISS count 2.
[fol. 2]	
March 10	Filed defendant's MOTION TO SUPPRESS evidence and brief.
March 17	Filed Return of Subpoenas to Testify executed on March 10, 1966 as to Vertia Mae Lofton, Rudolph Page and Gertrude Glass all by personal service.
March 17	Filed Return of Subpoenas to Testify executed by personal service on March 11, 1966, as to W. T. Hilburn and unexecuted as to Mary Cabell Mathis.
March 25	Enter ORDER denying motions of the defendant to dismiss all counts of the information; to suppress evidence because of an allegedly unlawful arrest; and to suppress statement of the defendant because of an alleged failure to inform him of his right to counsel STH
March 28	Filed Commissioner's Papers
March 28	Entered plea of GUILTY to count 2 only. Counts 1 & 3 are dismissed.
April 7	Filed JUDGMENT & COMMITMENT, sentenced 4 years to the custody of the Attorney General and shall become eligible for parole at such time as the board of parole may determine. Upon motion of the United States Attorney, counts 1 and 3 are dismissed. STH
April 7	Two certified copies to U. S. Marshal.
April 14	Filed defendant's MOTION for leave to appeal in forma pauperis and AFFIDAVIT of Miles Edward Haynes, the defendant.
April 14	Filed ORDER granting leave to prosecute appeal in forma pauperis. STH
April 14	Filed NOTICE OF APPEAL.
April 14	Statement of docket entries, notice of appeal and order granting leave to prosecute appeal in forma pauperis mailed to Circuit Court of Appeals, New Orleans.

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CR No. 3-703

[File Endorsement Omitted]

UNITED STATES OF AMERICA, PLAINTIFF

v.

MILES EDWARD HAYNES, DEFENDANT

INFORMATION—filed March 4, 1966

The United States Attorney charges:

COUNT I

Title 26, United States Code, Sections 5851 and 5861,
That on or about February 8, 1965, in Dallas, Dallas County, Texas, and in the Dallas Division of the Northern District of Texas, MILES EDWARD HAYNES, defendant herein, knowingly and unlawfully possessed a firearm as defined by Section 5848(1), Title 26, United States Code, to wit, a weapon made from a 410 gauge single shot shotgun with a barrel length of 12 5/16 inches, stock cut off, overall length 20⅜ inches, Serial No. 759885, which firearm had been made in violation of Section 5821, Title 26, United States Code, in that the making tax of $200.00 had not been paid prior to the making of this firearm, and in that, prior to the making of such firearm, there was a failure to file a written declaration of intention to make such firearm, as required.

COUNT II

Title 26, United States Code, Sections 5851 and 5861,
That on or about February 8, 1965, in Dallas, Dallas

County, Texas, and in the Dallas Division of the Northern District of Texas, MILES EDWARD HAYNES, defendant herein, knowingly and unlawfully possessed a firearm as defined by Section 5848(1), Title 26, United States Code, to wit, a weapon made from a 410 gauge single shot shotgun with a barrel length of 12 5/16 inches, stock cut off, overall length 20⅜ inches, Serial No. 759885, which firearm had not been registered with the Secretary of the Treasury or his delegate, that is, the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D. C., as required by Section 5841, Title 26, United States Code, and Section 179.98 of Title 26 Code of Federal Regulations, Part 179.

[fol. 4] COUNT III

Title 26, United States Code, Sections 5821 and 5861.

That on or about February 1, 1963, in the vicinity of Dallas, Dallas County, Texas, and in the Dallas Division of the Northern District of Texas, MILES EDWARD HAYNES, defendant herein, did knowingly and unlawfully make a firearm as defined by Section 5848(1), Title 26, United States Code, to wit, a weapon made from a 410 gauge single shot shotgun with a barrel length of 12 5/16 inches, stock cut off, overall length 20⅜ inches, Serial No. 759885, and did fail to pay the tax on the making of this firearm, in advance of the making of the firearm, as required by law.

/s/ Melvin M. Diggs
United States Attorney

/s/ B. H. Timmins, Jr.
Assistant United States Attorney

_____
(Date)

[fol. 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CR. 3-703

[File Endorsement Omitted]

[Title Omitted]

TO THE HONORABLE JUDGE OF SAID COURT:

MOTION TO DISMISS COUNT II—filed March 10, 1966

Now comes MILES EDWARD HAYNES, Defendant in the above entitled and numbered cause, and moves this Court to dismiss Count II of the information lodged against Defendant by the United States in the above-numbered and styled cause, and for reason would show the following:

I

That Section 5851 of Title 28, United States Code, which charges an offense with respect to Section 5841 is unconstitutional and therefore cannot support Count II of the information.

II

That Defendant, in lieu of the above, has been denied due process under the Fifth Amendment and his right to a fair trial.

WHEREFORE, premises considered, the Defendant now prays that Count II of the information be dismissed.

Respectfully submitted,

/s/ Ernest E. Figari, Jr.
3600 First National Bank Bldg.
Dallas, Texas - RI 1-3401

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CR. No. 3-703

[File Endorsement Omitted]

[Title Omitted]

ORDER DENYING DEFENDANT'S MOTIONS—March 25, 1966

On this the 11th day of March, 1966, came on to be heard the Motions of defendant MILES EDWARD HAYNES to:

(a) Dismiss all counts of the information.
(b) Suppress evidence because of an allegedly unlawful arrest, and
(c) Suppress statement of the defendant because of an alleged failure to adequately inform defendant of his right to counsel and because of the denial of due process.

The defendant appeared in person and with his attorney, Ernest E. Figari, Jr. Assistant United States Attorney Bailey F. Rankin appeared for the United States. After both parties announced ready the Court proceeded to hear the evidence and the arguments of counsel.

The Court finds:

(1) That neither the motion to dismiss the Information nor the arguments advanced by counsel in support of it state sufficient grounds for dismissal of the Information.

(2) That on the date of arrest of Miles Edward Haynes on or about February 8, 1965, the arresting officer had both the right and the duty under the law to arrest him and take the sawed off shotgun from his person.

(3) That prior to the making of any statement or confession to the Federal Bureau of Investigation, the defendant was fully and adequately informed of all of his rights under the Constitution of the United States, includ-
[fol. 7] ing his right to counsel and was not denied due process under the Fifth Amendment of the United States Constitution.

THEREFORE, all motions of the defendant identified herein above are overruled.

ENTERED this 25th day of March, 1966.

SARAH T. HUGHES
United States District Judge

APPROVED AS TO FORM AND SUBSTANCE:

BAILEY F. RANKIN, Assistant
United States Attorney

ERNEST E. FIGARI, JR.
Attorney for Defendant

[fol. 8]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AT DALLAS

No. CR 3-703

[File Endorsement Omitted]

UNITED STATES OF AMERICA

v.

MILES EDWARD HAYNES

JUDGMENT AND COMMITMENT—April 7, 1966

On this the 28th day of March, 1966 came the attorney for the government and the defendant appeared in person and with counsel appointed by the Court and being advised of the nature of the charge and of his rights, did waive in open court and in writing prosecution by indictment and consents to be prosecuted by information.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offense of possession of illegal firearm which had not been registered with the Secretary of the Treasury or his delegate in violation of Title 26 U.S.C., Sections 5851 and 5841 as charged in count 2 of the information and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the imposition of sentence is withheld and thereafter on the 7th day of April, 1966:

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his

authorized representative for imprisonment for a term of four (4) years and that defendant shall become eligible for parole at such time as the board of parole may determine.

Upon motion of the United States Attorney counts 1 and 3 are hereby dismissed.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to: .....

/s/ Sarah T. Hughes
United States
District Judge

(Signed) ..... (By) .....
Clerk Deputy Clerk

[fol. 9]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. CR. 3-703

[*File Endorsement Omitted*]

[Title Omitted]

NOTICE OF APPEAL—filed April 14, 1966

NOTICE is hereby given that MILES EDWARD HAYNES, Appellant and Defendant above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from a judgment upon a conviction of an offense named under 26 U.S.C. § 5851, to wit: possession of an unregistered firearm. Said Judgment having been entered upon said conviction on April 7, 1966, by the United States District Court for the Northern District of Texas, Dallas Division, further said Judgment imposes upon Defendant-Appellant a sentence of four (4) years to be served by Defendant-Appellant in a Federal Correctional Institution. The name of the Federal Correctional Institution where Defendant-Appellant is confined is Federal Correctional Institution, Texarkana, Texas. This appeal is made through Defendant-Appellant's court-appointed counsel, Ernest E. Figari, Jr., whose address is 3600 First National Bank Building, Dallas, Texas.

DATED: 14 day of April, 1966.

/s/ Ernest E. Figari, Jr.

[fol. 10]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23595

MILES EDWARD HAYNES, APPELLANT

versus

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Northern District of Texas

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OPINION—February 14, 1967

Before BROWN, COLEMAN, and AINSWORTH, Circuit Judges.

COLEMAN, Circuit Judge: Appellant was charged with a violation of 28 U.S.C.A., § 5851,[1] as follows:

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[1] § 5851. Possessing firearms illegally

It shall be unlawful for any person to receive or possess any firearm which has at any time been transferred in violation of sections 5811, 5812(b), 5813, 5814, 5844, or 5846, or which has at any time been made in violation of section 5821, or to possess any firearm which has not been registered as required by section 5841. Whenever on trial for a violation of this action the defendant is

[fol. 11] That on or about February 8, 1965, in Dallas, Dallas County, Texas, and in the Dallas Division of the Northern District of Texas, MILES EDWARD HAYNES, defendant herein, knowingly and unlawfully possessed a firearm as defined by Section 5848 (1), Title 26, United States Code, to wit, a weapon made from a 410 gauge single shot shotgun with a barrel length of 12 5/16 inches, stock cut off, overall length 20⅜ inches, Serial No. 759885, which firearm had not been registered with the Secretary of the Treasury or his delegate, that is the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D. C., as required by Section 5841, Title 26, United States Code, and Section 179.98 of Title 26 Code of Federal Regulations, Part 179.

He moved to dismiss on the ground that "Section 5851, of Title 28, United States Code, which charges an offense with respect to Section 5841 [2] is unconstitutional. [fol. 12] . . ." The motion was overruled. Haynes thereupon pleaded guilty, was sentenced to four years imprisonment, and has perfected this appeal.

A guilty plea is a waiver of all nonjurisdictional defects and defenses and admits the facts charged, *White* v. *Beto*, 5 Cir., 1966, —— F.2d ——; *Law* v. *Beto*, 5 Cir., 1966, —— F.2d ——. Where, prior to his guilty plea, a

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shown to have or to have had possession of such firearm, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such possession to the satisfaction of the jury.

[2] § 5841. Registration of persons in general

Every person possessing a firearm shall register, with the Secretary or his delegate, the number or other mark identifying such firearm, together with his name, address, place where such firearm is usually kept, and place of business or employment, and, if such person is other than a natural person, the name and home address of an executive officer thereof. No person shall be required to register under this section with respect to a firearm which such person acquired by transfer or importation or which such person made, if provisions of this chapter applied to such transfer, importation, or making, as the case may be, and if the provisions which applied thereto were complied with.

defendant appropriately raises the unconstitutionality of the applicable statute, an appeal, directed to that issue, is not foreclosed, *Ex Parte Siebold*, 100 U.S. 371, 25 L.Ed. 717 (1879); *Rice* v. *United States*, 5 Cir., 1929, 30 F.2d 681; *United States* v. *Urey*, 2 Cir., 1939, 106 F.2d 28.

Insofar as it requires an individual to incriminate himself, Section 5841 has at least four times been held unconstitutional.[3]

This Court aligned itself with those decisions in *Lovelace* v. *United States*, 357 F.2d 306 (1966). We there held invalid an indictment which charged the possession of a sawed off shotgun "which had not been registered by the defendant. . . .". We said:

> The offense charged includes not only the possession of a firearm, but *also the failure to register by the defendant himself* [emphasis added]. Such registration would clearly incriminate him, as he would [fol. 13] thereby have to admit that he was in possession of a firearm which he did not acquire in compliance with Section 5851. . . . The indictment by requiring proof that the defendant himself had not registered the gun has applied Section 5851 in an unconstitutional manner [357 F.2d at 309]."

The Court discussed the *Russell* case, cited in footnote 3, as to the unconstitutionality of Section 5841 and made known its familiarity with cases holding Section 5851 to be Constitutional. The Constitutionality of Section 5851, however, was not expressly passed upon as that was unnecessary to the determination of the issue under consideration.

The appellant here, enjoying the vigorous assistance of able appointed counsel, strongly attacks the Constitutionality of Section 5851. He argues that the Section cannot stand because it is inseparable from Section 5841, and, in any event, violates the privilege against self-incrimination guaranteed by the Fifth Amendment.

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[3] *Russell* v. *United States*, 9 Cir., 1962, 306 F.2d 402; *Dugan* v. *United States*, 8 Cir., 1965, 341 F.2d 85; *United States* v. *Fleish*, 227 F.Supp. 967 (E.D. Mich., 1964); *McCann* v. *United States*, 217 F. Supp. 751 (D. Colo., 1963).

As to the first ground, we quote from appellant's brief:

> "It is the Appellant's contention that, since Section 5841 is unconstitutional and void, that is, has no legal existence, Section 5851, being inseparable from Section 5841, is likewise unconstitutional, and should be held invalid.
>
> * * * *
>
> [fol. 14] "Thus the reference by Section 5851 to Section 5841 has the effect of incorporating a void.
>
> * * * *
>
> "Section 5841 is so essential to Section 5851 that the latter cannot operate without the former * * *"

As to the second ground, appellant says "* * * non-registration by 'any one' must, by the very provisions of Section 5841, necessarily include the present possessor of the firearm".

These arguments are not bereft of plausibility. Nevertheless, it cannot be ignored that Section 5851 has at least eight times been held Constitutional.[4] We have been cited, and we find, no case to the contrary. We are presented no issue of choice as to the weight of authority—the decisions all sustain Constitutionality.

In one of the most recent decisions collated in Footnote 4, *Castellano* v. *United States*, on which certiorari was denied, the Court held as follows:

> "The National Firearms Act has been upheld as a valid exercise by Congress of its taxing power.

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[4] *Castellano* v. *United States*, 10 Cir., 1965, 360 F.2d 852, *cert. denied*, 383 U.S. 949, 86 S.Ct. 1207, 16 L. Ed. 2d 211 (1966); *Taylor* v. *United States*, 10 Cir., 1964, 333 F.2d 721; *Sipes* v. *United States*, 8 Cir., 1963, 321 F.2d 174, *cert. denied*, 375 U.S. 913, 84 S. Ct. 208, 11 L. Ed.2d 150 (1963); *Frye* v. *United States*, 9 Cir., 1963, 315 F.2d 491, *cert. denied*, 375 U.S. 849, 84 S. Ct. 104, 11 L. Ed.2d 76 (1963); *Starks* v. *United States*, 9 Cir., 1963, 316 F.2d 45; *Capooth* v. *United States*, 238 F. Supp. 583 (S.D. Tex. 1965); *Hazelwood* v. *United States*, 208 F. Supp. 622 (N.D. Cal. 1962); *United States* v. *Forgett*, 6 Cir., 1965, 349 F.2d 601, *cert. denied*, 383 U.S. 926, 86 S. Ct. 929, 15 L. Ed.2d 845 (1966); *Mares* v. *United States*, 10 Cir., 1963, 319 F.2d 71.

[fol. 15] In the use of that power registration of the affected property or activity may be required. Russell does not deny the validity of the registration provision and says only that a prosecution may not be had thereunder. In the case at bar the offense is the possession—not the failure to register. The status of unlawful possession is created by the requirements of § 5841. The appellant was not forced into that status. He did not have to accept or acquire the gun. When he did so he became subject to the applicable statutory provisions; and the gun not having been registered, the offense was complete. His inability thereafter to register without self-incrimination does not defeat the charge or render the application of § 5851 violative of the Fifth Amendment."

The Judgment of the District Court is

AFFIRMED.

[fol. 16]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1966

No. 23595

D. C. Docket No. CR 3-703

MILES EDWARD HAYNES, APPELLANT

versus

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Northern District of Texas.

Before BROWN, COLEMAN, and AINSWORTH, Circuit Judges.

JUDGMENT—February 14, 1967

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Issued as Mandate:

[fol. 17]

SUPREME COURT OF THE UNITED STATES

No. 1474 Misc., October Term, 1966

MILES EDWARD HAYNES, PETITIONER

v.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 12, 1967

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1468 and placed on the summary calendar and set for oral argument immediately following No. 181.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 269458 16